

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

JUAN J. SANCHEZ,

Petitioner,

v.

RICK THALER, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,

Respondent.

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2:12-CV-0236

ORDER OVERRULING OBJECTIONS,
ADOPTING REPORT AND RECOMMENDATION,
DISMISSING PETITION FOR A WRIT OF HABEAS CORPUS, and
OPENING A NEW CIVIL RIGHTS ACTION

Petitioner filed with this Court a petition for a writ of habeas corpus. On February 4, 2013, the United States Magistrate Judge issued a Report and Recommendation recommending the petition for writ of habeas corpus be dismissed for want of prosecution for failure to comply with Court orders. On February 13, 2013, petitioner filed objections to the Report and Recommendation. In those objections, petitioner finally provides information requested by the Court in January 2013. Petitioner advises he is not eligible for mandatory release, is not entitled to federal habeas court relief, and that his writ may be properly dismissed for failure to state a claim upon which relief may be granted. Petitioner maintains, however, that “in the interest of justice, petitioner’s case should be fairly treated as a [§ 1983] lawsuit.”

Petitioner previously sought to amend his habeas corpus petition with a handwritten amended civil rights complaint, and was instructed by the Court that such civil rights claims are not cognizable in a habeas corpus action. More importantly, petitioner was instructed that to initiate a civil rights

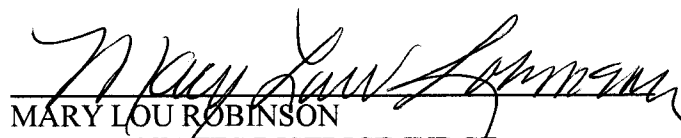
proceeding, he should utilize the proper form available to him in the prison law library and was advised that any such filing would be subject to the Prison Litigation Reform Act (PLRA) filing fee requirements. As of this date, petitioner has not initiated an independent civil rights proceeding. Instead, petitioner requests this habeas corpus proceeding be converted to a civil rights proceeding.

The undersigned United States District Judge has made an independent examination of the record in this case. Petitioner's objections are non-responsive to the Report and Recommendation determination that petitioner failed to timely comply with Court orders and those objections are hereby OVERRULED. The Magistrate Judge's Report and Recommendation is hereby ADOPTED. Accordingly, the petition for a writ of habeas corpus filed by petitioner is DISMISSED.

However, since petitioner is clearly seeking to initiate a civil rights proceeding, and even though he has failed to follow the Court's instructions, the United States District Clerk shall open a proceeding under 42 U.S.C. § 1983 utilizing Document [10] as the Original Complaint, and Document [15] as a Supplemental Complaint. This filing will be subject to the PLRA filing fee requirements.

IT IS SO ORDERED.

ENTERED this 24th day of June 2013.


MARY LOU ROBINSON
UNITED STATES DISTRICT JUDGE